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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,676	09/29/2005	Alexander Koppl	LU 6096 (US)	5583
24114 7590 12/15/2009 LyondellBasell Industries 3801 WEST CHESTER PIKE NEWTOWN SQUARE, PA 19073				
EXAMINER HARLAN, ROBERT D				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
12/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,676

Applicant(s)

KOPPL ET AL.

Examiner

Robert D. Harlan

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The Appeal Brief filed by Applicant on 09/11/2009 has been entered.
2. The Notice of Appeal filed by Applicant on 07/14/2009 has been entered.

Withdrawal of Finality

3. Applicant's Appeal Brief contains arguments that are persuasive and, therefore, the finality of that action is withdrawn.

Response to Amendment/Arguments

4. Applicant's amendment and arguments filed on 09/11/2009 have been fully considered and they are found persuasive.
5. The rejection of claims 1-2, 4-9 and 12 under 35 U.S.C. 102(b) as anticipated by Herzog, U.S. Patent No. 6,265,502 (hereinafter "Herzog") is withdrawn.

6. The rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over Herzog in view of Coalter et al., U.S. 2006/0142152 A1 (hereinafter "Coalter") is withdrawn.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-2, 4-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzog, U.S. Patent No. 6,265,502 (hereinafter "Herzog") in view of Coalter et al., U.S.

2006/0142152 A1 (hereinafter "Coalter"). Herzog teaches starting up an olefin polymerization process in a gas phase fluidized bed reactor using a metallocene to produce a polyolefin having a melt flow rate of less than 4 g/10 min with a start up phase between 12 and 72 hours. See Herzog, Abstract; col. 1, lines 36-48; col. 5, line 16 through col. 6, line 11; claim 2. Herzog further teaches increase of at least 1 deg. Celsius in the start up phase and temperatures within the upper and lower limits as prescribed by present claim 6. See Herzog, col. 4, lines 21-43. The melt flow rate is continuously regulated by hydrogen and monomer flow. See Herzog, col. 2, lines 44-54. Herzog differs from the present invention in that the present invention requires a metallocene, particularly bisindenylzirconium dichloride. Coalter teaches in analogous art a start-up polymerization, with the use of bisindenylzirconium dimethyl. In recently decided *KSR Int'l Co. v. Teleflex, Inc.*, the Supreme Court unanimously stated "the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable result." In view of Coalter, one having an ordinary skill in the art would be motivated to modify Herzog by using a bisindenylzirconium metallocene to help improve to the start-up step. Such modification would be obvious because one would

expect that the use of a start-up followed by a continued process on as taught by Herzog would be similarly useful and applicable to the polymerization process taught in Coalter.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Harlan whose telephone number is (571) 272-1102. The examiner can normally be reached on Mon-Thu, 10 AM - 8 PM.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 273-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert D. Harlan/
Primary Examiner
Art Unit 1796

rdh